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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976.

No. 76-1457

THE LUNDY PACKING COMPANY,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD AND LOCAL 525, MEAT & ALLIED FOOD WORKERS UNION, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.

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INDEX.

	PAGE
Opinions Below	1
Jurisdiction	2
Question Presented	2
Statutes Involved	2
Statement of the Case	2
Argument	6
There Is No Conflict Among the Circuits	6
The Finding of an Unfair Labor Practice Strike Is Overwhelmingly Supported by the Record	7
Conclusion	8

TABLE OF AUTHORITIES.

Cases.

National Labor Relations Board v. Remington Rand, Inc., 94 F. 2d 862 (2nd Cir. 1938)	6
Universal Camera Corp. v. National Labor Relations Board, 340 U. S. 474 (1951)	7

Statute.

29 U. S. C. § 151, *et seq.*	2

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OPINIONS BELOW.

Petitioner has accurately reported the citation to the decisions and orders of the National Labor Relations Board and the Administrative Law Judge. The opinion of the Court of Appeals for the Fourth Circuit is reported at 549 F. 2d 300.

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1. The caption has been corrected to include Local 525, Meat & Allied Food Workers Union, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, Intervenor below, in compliance with Rule 21(6) of this Court.

JURISDICTION.

The jurisdictional requisites are adequately set forth in the Petition.

QUESTION PRESENTED.

Whether the Court of Appeals for the Fourth Circuit, the National Labor Relations Board, and the Administrative Law Judge were correct in their unanimous findings that the strike of Petitioner's employees commencing on July 8, 1974 was caused by Petitioner's now uncontested unfair labor practices.

STATUTES INVOLVED.

Pertinent provisions of the National Labor Relations Act, as amended, 29 U. S. C. § 151, *et seq.*, are set forth in the Petition.

STATEMENT OF THE CASE.

Petitioner Lundy Packing Company (hereinafter referred to as "the Company") is a major producer of pork products for interstate sale throughout the East Coast Region. Petitioner's plant in Clinton, North Carolina, slaughters 4,000 hogs per day, thereafter selling the loins at the highest price received by any pork packer.

Petitioner's employees commenced lawful organizing for representation by Local 525, Meat & Allied Food Workers Union, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO (hereinafter referred to as "the Union"), in April, 1974. The Company immediately responded with a naked display of anti-union coercion and intimidation which is spread over 2,000 pages of transcript, and accurately reported in the thorough decision of the Administrative Law Judge (App. 7-69), subsequently adopted by the National Labor Relations

Board (App. 3-7) and enforced in all but a minor respect by the Court of Appeals for the Fourth Circuit (App. 1-2).[2]

The Administrative Law Judge, the National Labor Relations Board, and the Court of Appeals found that the Company had threatened, coerced, interrogated, created the impression of surveillance, and promulgated an unlawful no-distribution rule, all in violation of Section 8(a)(1) of the National Labor Relations Act (hereinafter referred to as "the Act"), and unlawfully discharged employees and refused to reinstate unfair labor practice strikers, all in violation of Sections 8(a)(1) and 8(a)(3) of the Act. More particularly, these tribunals have found that the Company: on June 6, 1974[3] unlawfully interrogated an employee, Ellen Raynor, as to what role each employee on a written list displayed to her had played in the Union's organizing campaign; created the impression of surveillance on June 6 and June 17 by supervisors' asking various employees why such supervisors had not been invited to specific Union meetings;[4] unlawfully maintained a written rule prohibiting employees under threat of discharge from distributing any printed matter on Company property, including Union literature; unlawfully discharged Williard Chavis on May 24 because of his Union activities and to discourage membership in the Union; and unlawfully discharged Roy Gene Wilson on June 18 for his Union activities and to discourage membership in the Union. These violations of the National Labor Relations Act were unanimously affirmed by the National Labor Relations Board and the Court

2. References to the Appendix filed by Petitioner in this Court shall be "App. ....." References to the Appendix filed in the Court of Appeals shall be "App. Below ....."

3. All dates are in 1974.

4. It was subsequently discovered at hearing, although not charged in the original complaint, that the Company on May 9 formally established an extensive network of written spy reports from Company supervisors concerning all suspected Union activity, resulting in the receipt of about 300 such written reports by the close of hearing. At hearing the Company refused to comply with a *subpoena duces tecum*, upheld by the Administrative Law Judge, requesting the documents (App. 12-15).

of Appeals.[5] The Company has now abandoned all contest of its guilt of the flagrant unfair labor practices found.

On May 24, 1974, after Willard Chavis was illegally fired, employees met and discussed walking out in protest of the Company's unfair labor practices. In a later meeting shortly after the illegal June 6 interrogation of Ellen Rayner, Ms. Rayner again urged the employees to walk out, because the Company was about to fire her as they had fired Willard Chavis (App. Below, 472-474).

Following the illegal discharge of a second employee, Roy Gene Wilson, the employees met on July 7, 1974. Union Organizing Committee Chairman Johnny Burgess spoke to his fellow employees about the firing of Willard Chavis and Roy Gene Wilson. Burgess talked about the unjust tickets the employees were receiving, the harassment from the foremen, the constant pressure being placed on them due to their Union activities, and the walk out which the employees were discussing among themselves (App. Below, 431). Following Burgess' statements, James Lawrence, Willard Chavis and Weldon Underwood spoke to the employees, reiterating Burgess' remarks about the illegal firing of Chavis and Wilson, and the harassment and constant pressure by the Company (App. Below 432-436, 440-460, 465-471).

Against this backdrop of repeated unfair labor practices and illegal firings over the prior two months, the employees voted unanimously to walk out. The proposition voted upon was "if Ules Jackson was fired when he went to work on Monday, then they would know that the Company intentions was to fire all of the Union people until they were all fired out of that plant"

5. The Administrative Law Judge also found, and the National Labor Relations Board confirmed, that an additional violation of the Act had occurred on May 8, when Company President Burrows T. Lundy, Sr., unlawfully threatened and coerced employees by in effect telling them he would find out which employees had signed Union cards. This finding was reversed by the Court of Appeals as a matter of law, and no review of this reversal is requested.

(App. Below, 434-435). The next day, Ules Jackson was fired,[6] and the employees walked out.

As soon as the strike began, Mr. Burgess began wearing a sign on the picket line protesting the firings, reprimands, cuts in pay and so forth (App. Below, 1233). Burgess told a newspaper reporter that day that the employees were "striking because of Willard Chavis and all of them getting fired," and for unfairness and harrassment (App. Below, 481). After a picketing permit had been obtained, pickets carried signs protesting "Illegal Discharges", "Unfair Labor Practices", "Discrimination" and "Unjust Firings" (App. Below, 1226-1231). From the first moment of the strike, picket signs continuously protested the unlawful firings and other unfair labor practices, and proclaimed the strike to be an unfair labor practice strike. No characteristics of an economic strike were ever present. No request was ever made to the Company to recognize the Union. to negotiate a collective bargaining agreement, or, indeed, to deal with the Union at all (App. Below, 1118-1119).

After a thorough review of the facts, the Administrative Law Judge found (App. 62):

> [T]he proximate cause of the strike was the fear that [the Company] had means of ascertaining who the union supporters were and would discharge them one at a time. This fear was generated by the Company's unlawful activities, found above, and by the series of discharges commencing with Chavis' termination on May 24 and including Wilson's discharge on June 18, both of which I find were unlawful. The strike therefore is an unfair labor practice strike.

The Administrative Law Judge's factual finding of an unfair labor practice strike, based on over 2,000 pages of testimony, was unanimously approved by the National Labor Relations

6. The legality or illegality of the discharge of Ules Jackson has never been determined by the Board. Instead, the Regional Director of the Eleventh Region of the National Labor Relations Board administratively determined prior to hearing not to issue a complaint in connection with Jackson's firing. As a consequence, no hearing has ever been held concerning the legality of the Jackson discharge.

Board and the Court of Appeals for the Fourth Circuit. Desperately trying to avoid the financial consequences of its illegal discharges and other flagrant unfair labor practices, the Company asks this Court to overturn this finding which is so firmly rooted in the record.

ARGUMENT.

There Is No Conflict Among the Circuits.

In response to the Company's argument that the strike was related to other Company actions not found to be unfair labor practices, the Administrative Law Judge ruled (App. 58, n. 74):

> [I]n determining whether a strike is an unfair labor practice strike the question is whether unfair labor practices were among the causes of the strike. If so, the strike is an unfair labor practice strike even though the strikers also may have been protesting other matters.

The Company's current attempt to argue that the Judge's legal analysis reflects a division of authority among the Circuits is flatly wrong, and should be rejected. Since the passage of the National Labor Relations Act in 1935, thousands of cases involving the factual finding of an unfair labor practice strike have been routinely and uniformly dealt with by the National Labor Relations Board and the Federal courts. From the outset, a strike has been judged to be an unfair labor practice strike if at least one cause of the strike is the Employer's unfair labor practices. See *National Labor Relations Board* v. *Remington Rand, Inc.*, 94 F. 2d 862, 872 (2d Cir. 1938).

This legal principle has been uniformly applied by the National Labor Relations Board. With the most minor variations in language, all of which state the same fundamental test, this principle has been consistently applied by the Courts of Appeals. The cases referred to on pages 8 to 10 of Petitioner's Brief conclusively confirm that no substantial disagreement on this point has arisen among the Circuits in forty years of developing case law. Petitioner's attempt to establish an artificial conflict among the Circuits is wholly unsupported by the case law and should be rejected.

The Finding of an Unfair Labor Practice Strike Is Overwhelmingly Supported by the Record.

The Administrative Law Judge, National Labor Relations Board, and Court of Appeals all found unanimously that the strike commencing on July 8, 1974 was caused by the Company's repeated unfair labor practices over the preceding two months, including the illegal discharges of Willard Chavis and Roy Gene Wilson. This finding is overwhelmingly supported by the record, and should not be set aside. *Universal Camera Corp.* v. *National Labor Relations Board*, 340 U. S. 474 (1951).

The Company's current attempt to portray itself as ingenuously uncertain as to the nature of the strike is not only legally irrelevant to any factual findings, but also wholly unsupported by the record. The picket signs from the first day of the strike, the public statements of the striking employees, the unfair labor practice charge and complaint, the lack of any economic component to the strike, and, presumably, the hundreds of internal spy reports all placed the Company on full notice that its employees were striking as a result of, and in protest against, the massive illegal actions by the Company.

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be denied.

Rsepectfully submitted,

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